

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL A. RISPERS,

Plaintiff,

v.

REPORT AND RECOMMENDATION

D. MILLER et al,

20-CV-6669-CJS-MJP

Defendant.

Pedersen, M.J. On June 23, 2022, the undersigned issued an Order directing Plaintiff to show cause as to why this case should not be dismissed pursuant to Western District of New York Local Rule of Civil Procedure 41(b). (ECF No 37.) The deadline to file a response was July 25, 2022. As there has been no response, and no indication the order was undelivered, the undersigned recommends that the case be dismissed for failure to show cause.

BACKGROUND

On May 17, 2021, the Honorable Charles J. Siragusa referred this case to the undersigned pursuant to 28 U.S.C. § 636 for all pre-trial matters. Materials sent to Plaintiff were returned as undeliverable on April 2, 2021 (ECF No. 29); May 25, 2021 (ECF No. 32); February 11, 2022 (ECF No. 45); and June 21, 2022 (ECF No. 51). The Court has had no contact with Plaintiff since November 5, 2021 (ECF No. 42).

On June 23, 2022, the Court issued an Order to Show Cause (ECF No. 52) to Plaintiff directing him to show cause as to why this case should not be dismissed pursuant to Western District of New York Local Rule of Civil Procedure 41(b). That Order was sent to his address on the docket: Michael A. Rispers, 1412101398, Anna M. Kross Center (AMKC), Riker Island, 18-18 Hazen Street, East Elmhurst, NY 11370. To date, Plaintiff has failed to respond, and the Order has not been returned as undeliverable. Consequently, the undersigned recommends that the case be dismissed for failure to prosecute.

Accordingly, the Court hereby:

RECOMMENDS that the matter filed under Civil Action Number 6:20-CV-6669 be dismissed with prejudice, and the Court further

RECOMMENDS that this matter should be deemed closed.

Pursuant to 28 U.S.C. § 636(b)(1), it is hereby

ORDERED, that this Report and Recommendation be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of this Court within fourteen (14) days after receipt of a copy of this Report and Recommendation in accordance with the above statute, Fed. R. Civ. P. 72(b), 6(a) and 6(e) and Local Rule 72.

The district court will ordinarily refuse to consider on de novo review arguments, case law and/or evidentiary material which could have been, but was not, presented to the magistrate judge in the first instance. *See, e.g., Paterson-Leitch Co., Inc. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985 (1st Cir. 1988).

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. *Thomas v. Arn*, 474 U.S. 140 (1985); *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989); *Wesolek v. Canadair Ltd.*, 838 F.2d 55 (2d Cir. 1988).


The parties are reminded that, pursuant to Rule 72(b) of the Local Rules for the Western District of New York, "[w]ritten objections . . . shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority." **Failure to comply with the provisions of Rule 72(b), or with the similar provisions of Rule 72(a) (concerning objections to a Magistrate Judge's Decision and Order), may result in the District Court's refusal to consider the objection.**

Let the Clerk send a copy of this Order and a copy of the Report and Recommendation to the attorneys for the Plaintiff and the Defendant.

IT IS SO ORDERED.

Dated: July 28, 2022

Rochester, New York


MARK W. PEDERSEN
United States Magistrate Judge